

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5268

PETITION OF H. JASON HARRISON
(Hearing held November 10, 1999)

OPINION OF THE BOARD
(Effective date of Opinion, December 10, 1999)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(c) and 59-C-1.326(a)(2)(b). The petitioner proposes to construct a ten-foot fence and seeks variances of forty-three (43) feet from the side lot line setback of fifty-three (53) feet and of thirteen (13) feet from the required rear lot line setback of twenty-three (23) feet.

The subject property is Lot 30, Block 10, Bradley Hills Subdivision, located at 2524 Pembroke Road, Bethesda, Maryland, in the R-90 Zone (Tax Account No. 0442585).

Decision of the Board: Requested variances **granted**.

Jason Harrison, the petitioner, and Curt Schreffler, P.E., appeared at the hearing. Mr. Schreffler testified that the location for the tennis court and ten-foot fence were chosen because it is the most level plateau on the property and would adjoin a neighboring tennis court. The lot slopes upward approximately 15 feet from the street toward the house. The proposed tennis court and ten-foot fence would be located in the southwest corner of the lot. The property is located in a new subdivision, which will become a part of an existing neighborhood. An existing dwelling is located on the lot at the northwest boundary of the petitioner's lot; a dwelling is proposed, but not yet constructed on the lot at the petitioner's northeast boundary. The site adjoins Pembroke Terrace at its eastern lot line. The eastern area of the lot has significant landscaping.

Mr. Harrison testified that the site for the tennis court and ten-foot fence would not require the removal of the existing trees; the petitioner also testified that tennis courts are common in the neighborhood. The ten-foot fence would extend into the side lot setback by forty-three (43) feet and into the rear lot line setback by thirteen (13) feet (as depicted in Exhibit No. 4).

Mr. Harrison testified that he had spoken with his neighbors and that they supported the variance request. No evidence in opposition was presented at the hearing and none was received in the record prior to the hearing. The applicant was of the opinion that the ten-foot fence would increase the utility and value of the property.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The uneven terrain of the lot limits new construction. The proposed site is the only level plateau on the property and the proposed construction would not require the removal of the existing trees on the lot. The proposed construction would have to be placed in the middle of the property's rear yard to meet the required zoning standards. The Board finds that the strict application of the setback requirements would result in practical difficulty to the applicant if the variances are not granted and that the variances requested are the minimum reasonably necessary to accomplish the proposed project. The design of the proposed fence would

be similar to other structures in the neighborhood and would minimize the possibility of intrusion onto the adjoining neighbors' property. Therefore, the variances can be granted without impairing the intent, purpose and integrity of the General Plan. The Board further finds that the construction of a ten-foot fence located beyond the setback, as proposed herein, will not be detrimental to the use and enjoyment of adjoining properties.

Accordingly, the requested variances of forty-three (43) feet from the fifty-three (53) foot required side lot line setback and of thirteen (13) feet from the required twenty-three (23) foot rear lot line setback for the construction of a ten-foot fence are granted subject to the following conditions:

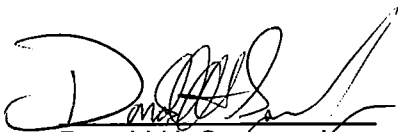
1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Mindy Pittell Hurwitz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 10th day of December, 1999.



Donald H. Spence, Jr.
Chairman, Board of Appeals

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.